

1925
Box 1

RAILWAYS ACT, 1921.

PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

SCHEDULES OF STANDARD CHARGES.

STANDARD REVENUE—ALLOWANCE UNDER SECTION 58 (1) (b).

TUESDAY, MARCH 24TH, 1925.

SIXTEENTH DAY.



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1925

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PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

TUESDAY, MARCH 24TH, 1925.

PRESENT :

W. B. CLODE, Esq., K.C. (*President*).

W. A. JEPSON, Esq.

GEO. C. LOCKET, Esq., J.P.

SIXTEENTH DAY.

THE RT. HON. H. P. MACMILLAN, K.C., MR. A. C. CLAUSON, K.C., MR. BRUCE THOMAS, and MR. ALFRED TYLOR (instructed by the Solicitors of the Amalgamated Railway Companies) appeared for the Railway Companies.

MR. F. B. MERRIMAN, K.C., MR. F. G. THOMAS, K.C., and MR. JACQUES ABADY (instructed by Messrs. Vizard, Oldham, Crowders, and Cash) appeared for the Traders' Co-ordinating Committee (including the Mining Association of Great Britain); for the National Association of Railway Travellers; and for the following local authorities: The Boroughs of Leeds, Cardiff, Oldham, St. Helens, West Ham, East Ham, Gravesham, Richmond, Dartford, Southport, Watford, Leamington

Spa, Morecambe, and Rothesay; and for the Urban District Councils of Mitcham, Heston and Isleworth, Teddington, Wallington, Surbiton, Harrow-on-the-Hill, Prestwich, Epsom, Carshalton, Barnet, Hampton, Bexley Heath, and Staines.

THE HON. STAFFORD CRIPPS appeared for the London County Council.

MR. CYRIL HURCOMB, C.B., C.B.E., appeared for the Ministry of Transport.

MR. HERBERT MORRISON appeared for the National Joint Council of the Trade Union Congress and the Labour Party; and for the London Labour Party.

MR. J. H. WORRALL appeared for the National Anti-Profiteering Society.

Mr. Locket: Mr. Merriman, I have been thinking a good deal about what passed yesterday, and there are one or two points to which I should be very glad if you would direct your attention, and enlighten me at any rate, as far as you possibly can. I did not think that we ought to leave the matter quite where it was left when we broke off last night.

I need not remind you of what is said in the clause that we are considering, but I would draw your attention to the last sentence of it, where it says: "Unless it can be shown that such expenditure has not enhanced the value of the undertaking." By whom is it to be shown? Certainly not by us, and presumably not by the railway company; and therefore it seems to me that it must be shown by those who are seeking to reduce the figures which the railway companies have put in.

In looking through the list that appeared in the railway companies' tables, those items seem to my mind to divide themselves into three categories; firstly, those who are undoubtedly there by right and which are expenditure which have clearly enhanced the value of the undertaking; secondly, those about which there might be some doubt, such as several of those items which you mentioned yesterday against which you entered a sort of caveat; and then a third category which seems to invite attack.

I should like you to consider as to whether you could concentrate any remarks that you may have to make to us upon that third category. It seems to me that if you were to deal with those—the others, as it seems to me, are unimportant, and they do not bulk very largely, although there are some considerable items there—you would then put Mr. Macmillan and his colleagues on the defensive, so to speak, and they would have to give some reason to us as to why those items were inserted.

Please do not imagine that I am finding fault in any way, but I am anxious to be of any possible assistance that I can to you, because I appreciate so very highly the help that you can give us; in fact, we are dependent upon the help which you can give us if we are to discharge our duties satisfactorily, and therefore I was anxious that the matter should not go by default.

Mr. Merriman: I am very much obliged to you, Sir, and I was going to ask leave to supplement the remarks that I made yesterday, because I do most fully appreciate the difficulty which the Tribunal is in, just as much as we are, in dealing with the thing in the air; and it really was simply because we felt that it would be unsatisfactory to investigate at considerable expense, in the air, without knowing the sort of lines upon which the thing ought to be presented, that I made the submissions that I did make yesterday.

Now, following on what has been said, I am going to try and just give one or two concrete instances which appear on the face of it to call for explanation. But may I preface what I am going to say by saying this, that I do accept generally that the onus of proof is upon us; I mean that the scheme appears clearly to indicate that we have to show that expenditure has not enhanced the value of the undertaking. But, of course, one can go a long way in principle without actually taking the particular items; and by that I mean this, that according to their own evidence—and for the purposes of making this comment I pray in aid what Mr. Locket has just said—on the face of it there appear to be a considerable number of items which invite attack, and yet when you look at Mr. Quirrey's evidence at Question No. 906—I am now really only giving chapter and verse for the submission that I made yesterday—you see, this—

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[Continued.]

Mr. Locket: Was that in yesterday's proceedings?
Mr. Merriman: This is in the original proceedings on page 77; and at Question No. 902 in the first column of that page it says: "(Q.) It is not worth while going through them all. It is common ground between us, is it not, that what you have done is to take every capital expenditure whatever, except certain specified items such as rolling-stock and steamships, and so on, and apply an arbitrary formula to all of them, regardless of whether they were remunerative or not, and regardless of whether they have enhanced the value of the undertaking or not?—(A.) Not regardless of the enhancement of the value of the undertaking."

Mr. Clauson: My learned friend is aware that this evidence had to do with the claim under (c), and it had nothing to do with the claim under (b).

Mr. Merriman: I appreciate that; but as my learned friend Mr. Macmillan said in opening the case—I referred to the passage yesterday—when you are upon the question of the enhancement of the value of the undertaking the same construction has to be given to those words.

Mr. Clauson: My learned friend does not appreciate my point. He is saying that Mr. Quirey admitted something about certain figures. True, Mr. Quirey did admit something about figures which we were putting forward with regard to the claim under (c); but that has nothing to do with the figures in the claim under (b). That is the only point that I want to make.

Mr. Merriman: The only point that I am upon is this, that those figures are included with reference to the question of enhancement, and as I understand it—and I have never heard it disputed up to this moment—the same principle applies to the other subsections.

Mr. Clauson: I do not know what my learned friend means, and, therefore, I cannot say anything more about it at the moment.

Mr. Merriman: If my learned friend will permit me to complete my argument, he will no doubt be able to give a very full and satisfactory answer to it.

Mr. Jepson: It is the fact that when we come to consider this we shall have to take into consideration whether the claim made by the railway company is in regard to expenditure which has enhanced the value.

Mr. Clauson: Certainly.

Mr. Jepson: I understand Mr. Merriman's point to be this, that the considerations which will have force with us as regards the meaning of "enhancement" are the same, whether the claim comes under (b) or under (c).

Mr. Clauson: As regards the meaning of "enhancement," certainly.

Mr. Merriman: That is all that I am dealing with.

Mr. Clauson: The reason why I interposed was this, that I wanted to make it clear that Mr. Quirey was not here being asked anything about the principles upon which we prepared the (b) claim; it was all with regard to the principles upon which we had prepared the (c) claim.

Mr. Jepson: Before you continue, Mr. Merriman, may I point out that there is a slight difference in the wording of the reference to "enhancement" in (c) and in (b). In (b) it says "has not enhanced the value of the undertaking," as though it was referring to a thing in the past.

Mr. Merriman: Yes.

Mr. Jepson: But in (c) it says "which enhance the value of the undertaking." There may be a very strong difference there. I mean supposing that a railway company, for instance, promotes a line to develop a certain district, it may be that for years it cannot be said that financially it has enhanced the value of the undertaking, but still there is the potential enhancement which they hope to get from it.

Mr. Merriman: Yes.

Mr. Jepson: I am not quite sure whether that is not a rather different category to the claim under (b), where you have to prove that it has not enhanced the value of the undertaking, which apparently

refers to something in the past. I am not sure whether there is a difference, but if there is perhaps you will deal with it.

Mr. Merriman: It did not occur to me that there would be any difference in principle between the two, and I was not proposing to lay any stress upon the words in our favour. I was only calling attention to this passage that I have read to you.

Mr. Jepson: Then I will simply put those remarks of mine as a sort of qualification of what I said before, that the same considerations would have force with us whether we were dealing with enhancement under (b) or enhancement under (c).

Mr. Merriman: At any rate, I think I am entitled to say this, that if there is any difference in the words as between (b) and (c) the difference is in our favour, subject only to the question of the onus of proof.

Mr. Jepson: Quite.

Mr. Merriman: But, as I say, I thought everybody up till this morning had acted upon the assumption that the interpretation of the words "enhancing the value of the undertaking" would have to be substantially the same whether you were dealing with those words under (c) or whether you were dealing with them under (b), subject, of course, to the onus of proof, which is not in point for the moment.

Then Mr. Quirey is asked this, in Question No. 903, on page 77: "(Q.) Have you disallowed some, on the ground that they did not enhance the value of the undertaking?—(A.) No, because we consider that everything included in the list has enhanced the value of the undertaking. (Q.) Have you left anything out on the ground that it does not enhance the value of the undertaking?—(A.) Yes, we have left out the items that I have mentioned. (Q.) That is to say, steamships, rolling-stock, and Parliamentary expenses?—(A.) I do not count those as not enhancing the value of the undertaking; they become early remunerative." That is the point. He has not put them in (c), not because they do not enhance the value of the undertaking, but because they become remunerative at once, as was explained in another passage, and therefore do not fall to be dealt with under (c).

Then it goes on: "(Q.) Then you have not left out anything as not enhancing the value of the undertaking?—(A.) I have not left out anything, because I say that the works which the railway companies undertake are for the purpose of enhancing the value of the undertaking." It may be that they are originally intended for the purpose of enhancing the value of the undertaking, and it may be thought at the time that they do so; but the question is whether they have enhanced the value of the undertaking, the undertaking being, not the undertaking in respect of which the works were originally made, but the amalgamated undertaking. That is what seems to me to be the underlying fallacy of including, as they have included, every single form of capital expenditure.

Then, if I may, I will read just the next two questions. Question No. 907 is: "(Q.) I am sure they are for the purpose of enhancing it, either directly or indirectly. There are golf courses, and things like that, in the claim?—(A.) Yes, attached to the company's hotels. (Q.) You assume that everything that the company spent has enhanced the value of the undertaking, and you assume that none of the works has become fully remunerative (with the exception of two or three named categories) within less than 15 years?—(A.) Yes, that is so. As regards enhancement, we think that is a reasonable assumption." I am not upon the point about the 15-year formula, but I am on the point about enhancement, and the same principle quite clearly underlies the lumping in of all capital expenditure on the ground that presumably it has enhanced the value of the undertaking, although some of it is excluded from (c) because it becomes immediately remunerative. That is what Mr. Quirey said about it.

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[Continued.]

Then I should like, while I am upon this matter, to call attention to one or two other passages. On page 110, at Question 1806, Mr. Cope was asked: "And they also, I suppose, would not have done it?" —that is, they would not have incurred the expenditure—"unless it was going to enhance the value of the railway, and so it must have enhanced the value?" —(4.) Everything cannot enhance the value of the undertaking; but on the average they do, and I should say that as far as the works authorised by the directors are concerned a great proportion of them do enhance the value of the undertaking". Be it so; that may be true enough; but they have lumped in everything, and they have set so that they do all enhance the value of the undertaking.

Again on page 215 Sir Ralph Wedgwood, at Question 4382 was asked: "I rather gathered that you said that you would not invest the money unless you were going to get a bigger return than you did from your Government securities; in fact, you did say that?—(4.) Broadly speaking, yes?" Now, there I suggest that we have got what really is the test of enhancement, in that last answer. *Prima facie*, upon the evidence given by Mr. Quirey and Mr. Cope, all expenditure is put in, and the Tribunal is asked to say that because the directors at the time they incurred the expenditure thought that it probably would enhance the value of the undertaking, it is to be assumed that it has in fact done so.

I submit that we get some way already by seeing that *prima facie* there must be included in this sum, as Mr. Lockett said a moment ago, a good deal of expenditure which invites attack.

President: Could you at some time or another tell us what are those items which obviously invite attack; because we should then be bringing it down to earth, so to speak.

Mr. Merriman: I am going to try to do that, Sir; but may I try to put it generally first of all, and then to put before you one or two specific items in order to illustrate what it is that I am trying to say? Let us take for example the case of an expenditure on land, shall we say, of £2,000,000. I am only stating this generally in the first instance.

Mr. Jepson: This is a hypothetical case, is it?

Mr. Merriman: Yes, for the moment I am putting it hypothetically, and then I want to give one or two concrete instances which I suggest fall into this category, and I want to put it in round figures for the sake of illustrating the argument that I am now trying to put before the Tribunal.

Suppose that you have an expenditure of £2,000,000 upon some definite work, say the purchase of land, or what not. Yesterday I took a work which cost £100,000 a year, and that is why I have taken the figure of £2,000,000, because that represents 5 per cent. It has cost them £100,000 a year, either in the loss of interest on free reserves or in the raising of capital for the purpose of making that particular work, and £100,000 is 5 per cent. on £2,000,000. Now, supposing for the sake of argument that it can be shown that in fact it earns only 2 per cent. and is never likely to earn more than 2 per cent., that is £40,000, then there are three possible views. We say that under circumstances like that it cannot have enhanced the value of the undertaking at all.

President: Is that so? What I mean is this: I have in mind a case where one railway, for the purpose of keeping out another railway, laid out a very large sum of money in land, and thereby saved themselves from a competitive interest in their neighbourhood. Did not that enhance the value of their undertaking? That is an actual case which I remember well.

Mr. Merriman: Have the two railway companies amalgamated?

President: In this case, no.

Mr. Merriman: Of course, if they had, I should say that quite clearly it could not have enhanced the value of the amalgamated undertaking; but if they had not amalgamated, then the answer to the question I think is that it may have enhanced the value

of the undertaking or it may not, according to the circumstances, the circumstances being whether or not it has preserved to them a profit greater or a profit less than the cost of buying the land to keep the other people out. If it has preserved or ensured to them a profit greater than the annual interest upon the sum which it has cost them to adopt that policy—I was going to say that "dogs-in-the-manger" policy—then no doubt it might be said to have enhanced the value of their undertaking. Take the figures that I am putting: If the £2,000,000 which had been expended would ensure them a profit of £100,000 or upwards, then it would have enhanced the value of the undertaking; but if not, no.

President: Therefore we cannot look merely to the circumstance of what it earns?

Mr. Merriman: What it earns or what it saves.

President: You were putting the £40,000 against the £100,000.

Mr. Merriman: Yes.

President: And you were saying that therefore it must be a case in which it did not enhance the value of the undertaking.

Mr. Merriman: Because I am taking it in the simplest form. I do not say that there are not other ways in which the £40,000, or the £100,000, as the case may be, might be earned. It may be that there are, and the case which you have just put to me illustrates that. But that is the test which has to be applied.

Now may I just go on. That is one view. The view that we are submitting is that if when you have taken all the factors into account the benefit to the railway company year by year does not amount to the cost to them year by year of having undertaken that particular work, then that work has not enhanced the value of the undertaking. That is one view; then at the other end of the scale there is the view which apparently is put forward by the railway company, namely, that if a work can be shown to have any value at all (either as a realisable asset, or as bringing in some return, however small, even though it is only 1 per cent.), it has enhanced the value of the undertaking, and therefore the capital which has been spent upon it must get its reward, regardless of whether the capital which has been spent upon it has cost the railway company far more than any profit which they can earn from it.

We say that that is wrong; but it is possible—and I throw this out as a suggestion—that there may be a middle view. I have taken round figures for the purpose of illustrating the argument. It may be that some of the expenditure which has been made on a particular work may justify the presumption that there has been enhancement: For example, supposing that it is never possible, taking all the factors into account, that your £2,000,000 could earn more than £40,000. I am asking you to assume that it is so, that taking all the factors into account (namely, that it has prevented other people from competing), that it earns a certain revenue itself, and so on, from first to last it cannot be shown that it could possibly be of a greater annual benefit to the railway company than £40,000.

Now then, is it not possible to say this: "That £40,000 represents 5 per cent., not on £2,000,000 but on £800,000, and it may be right, therefore, to remunerate £800,000 of the capital, because that can be shown—and at any rate not more than that can be shown—to have enhanced the value of the undertaking, in that it does produce a return equal to or greater than the annual cost of the outlay. But the remaining £1,200,000 cannot be shown to have enhanced the value of the undertaking, and the only part of it, therefore, which falls to be rewarded is the £800,000. I am using those round figures for the purpose of illustration, and I suggest that the true view is the first view, and that quite clearly the wrong view is the one which the railway companies are putting forward; but I think that possibly there is a third alternative which is the view that I am now putting.

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[Continued.]

Otherwise you would get this absurd position: that, bearing in mind that what has to be remunerated is capital expenditure; when you have once got it that the capital is expended, then whatever you decide is the meaning of "the enhancement of the value of the undertaking," this capital has to have its reward, apparently regardless of the extent of the enhancement.

It may be obviously a case in which the enhancement of the value of the undertaking clearly is 20 per cent. But they do not ask for 20 per cent., and quite rightly, because what has to be remunerated is the raising of the capital. That is an instance one way. If they are right in saying that, provided the expenditure produces any sort of profit, however small; if they are right in that contention as to the meaning of "enhancement," then I admit that they are entitled to whatever is the proper reward on the capital, 5 per cent., or whatever it may be. But it does seem to me to follow from that, that you must dissect the capital spent on a particular work. If it shows some small remuneration which is not in the least way commensurate with what it has cost the railway company, then you might say that only so much of the capital falls to be remunerated as shows enhancement in the sense that I am putting, and that the rest of it does not. That is the submission that I want to make, and now I want to take one or two concrete instances.

Mr. Jepson: Before you come to that, is there not another alternative? I am assuming that there is no free reserve, but that money was spent out of the accumulated funds of 1913-14, before they got the Government compensation which has so very largely swollen the free reserves. With regard to most of the money that I am speaking of—that is, money invested with them and earmarked as belonging to the superannuation fund, pension fund, savings bank, and so on—they are liable for something like 4 per cent., 4½ per cent. or 5 per cent. upon it, and it may be that that money is invested and brings in 5 per cent. Suppose that it is bringing in 5 per cent. as a result of being invested in War Loan, and they have to pay out 4 per cent., they are only making a net profit of 1 per cent. Supposing, taking your own illustration, that they are only making 2 per cent. on their £2,000,000 of expenditure, would you consider that to be a case which enhances the value of the undertaking? I am assuming in this case that although not fully remunerative, it is bringing in something more than they got as the net profit on the investment, having regard to the fact that on the investment they had to pay a sum of 4 per cent. or 4½ per cent. to their own internal concerns such as savings banks, pension fund and superannuation fund.

Mr. Merriman: Yes, but then are they not still liable to pay that? They have to replace that, have they not?

Mr. Jepson: I know, but still they have not got to pay it back, and they invest it in War Loan at 5 per cent. They have still got their liability of 4 per cent., and therefore the net profit by investment in War Loan is 1 per cent. Assuming that they only earned 2 per cent. on their capital expenditure of those sums, does that, in your view, enhance the value of the undertaking?

Mr. Merriman: I hope that I have got it clearly, but I am not sure. It is a new point of view, and I am not quite sure that I follow it.

Mr. Jepson: It is only just something that occurred to me as you were putting forward your alternatives.

Mr. Merriman: Yes. In the case that you were putting, it was originally taken out of the Superannuation Fund, on which they had got to pay 4 per cent., but it must have been earning something at the time, out of which they were paying that 4 per cent.

Mr. Jepson: I am assuming it is invested in War Loan, or in some other such security.

Mr. Merriman: And they were originally getting 5 per cent. on it, and paying out 4 per cent.?

Mr. Jepson: Yes.

Mr. Merriman: But then, when it is paid back, supposing that they get the capital paid back, is it not still going to be invested at 5 per cent. and paid for? Does it change the situation at all?

Mr. Jepson: It may be; I do not know. I was assuming for the moment that money had been expended from that Fund on capital account, and that they were now making a claim to 5 per cent. on it, or some such figure.

Mr. Locket: Is not the point of Mr. Jepson's question this, that they had exchanged a 5 per cent. investment for a 2 per cent. investment; that they were taking it out of the War Loan on which they were getting 5 per cent., and investing it in a work of the railway company which brought them in only 2 per cent.? Was not that the illustration?

Mr. Merriman: I should have thought that that could not enhance the value of the undertaking, because they still have the liability to pay the 4 per cent.

Mr. Jepson: I agree, but they were only getting a difference of 1 per cent. by reason of the investment.

Mr. Merriman: Yes; but surely, if I have got it right, in the first place they were earning 5 per cent. on the particular capital, out of which 5 per cent. they had got a liability to pay 4 per cent.

Mr. Jepson: Yes.

Mr. Merriman: And as a result of taking the capital out of War Loan and putting it into the work, they earned 2 per cent. and they still had to pay 4 per cent.

Mr. Jepson: Yes.

Mr. Merriman: How can that be an enhancement of the value of the undertaking? They diminish their revenue by 3 per cent., and their liability remains the same.

Mr. Jepson: Yes, perhaps you are right.

Mr. Merriman: Is it not so?

Mr. Jepson: Well, it just occurred to me; that is all.

Mr. Merriman: I am sorry, but I am afraid I was rather stupid about it; I am rather slow sometimes at picking up figures.

Mr. Jepson: What occurred to me at the moment was that they were really making more out of it by getting 2 per cent. on the expenditure than they were getting out of the investment, minus what they had to pay.

Mr. Merriman: And I will tell you why: I think in the way in which you put it originally you were counting in the 5 per cent. which they were going to get, or as to which it is in dispute whether they will get it or not, and, of course, if they do get it there is an enhancement after they have got the 5 per cent. allowance. That is really what it comes to, I think.

Now let me just take one or two instances which have already been given, and let me suggest that they are, as I shall submit, clear cases of the sort of thing which I am driving at.

On p. 135 there is something to which I want to call attention. The item referred to there is in Folio 8 of the North Eastern Company's accounts. The number of the question is 2559, and the item about which my learned friend, Sir Douglas Hogg, was asking was the Cleveland Deepwater Quay, which is an item of £100,000, appearing on p. 8 of the London and North Eastern Company's account. Sir Douglas Hogg was cross-examining Mr. Williams, and he said: "Turn on again to the next page. I am only asking for illustrative items to try and understand your principle. I see land, property, etc., not forming part of railway or stations, and the biggest item, or nearly the biggest item, is Cleveland Deepwater Quay, £100,000. Can you tell me what that was? It seems such a funny round figure for the work?—(A.) That was, I believe, land bought for the extension of the Cleveland Deepwater Quay. (Q.) Then was the Cleveland Deepwater Quay extended?—(A.) It was bought for a new company which was to be established, I think, in proximity—

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[Continued.]

I am not sure of this—to the Middlesbrough Docks. (Q.) Was the new quay established?—(A.) It was not. (Q.) Was this land bought and never used?—(A.) Yes. (Q.) And you are asking the users of the railway to pay you 6 per cent upon the £10,000 from the date when you bought the land, although you have never erected any work upon it?—(A.) That is so. (Q.) You say £100,000 was the amount which was paid?—(A.) I believe it was." Then there are some questions directed to its being a round sum.

Now, there you have got a perfectly clear-cut instance of £100,000 being spent upon a work which was barren. So far as the £100,000 is concerned, it is perfectly plain, in my submission, that it cannot possibly have enhanced the value of the undertaking. It may be that if eventually the Amalgamated Company had decided to go on with that particular work, they would have had to spend a great deal of money on it (nothing having been done yet except the buying of the land), but eventually the expenditure of the whole amount might enhance the value of the undertaking. It is a matter for the present Directors of the amalgamated concern to say whether they think it is worth while going on with it. But this particular £100,000, as it now stands, upon which they are claiming this money, in my submission *prima facie*—indeed, not merely *prima facie*, but on the evidence which has been given upon it—cannot possibly enhance the value of the undertaking. It is an abandoned work; it is money which has been spent for no useful purpose whatever at this present moment, and which, in order to be useful, will, of course, have to have a great deal more money spent upon it if it is to be gone out with, and the whole of the money for the construction will have to be spent and then it will be possible for the company to say, either in advance or after the work has been done, whether or not it is a profitable work. At present, in my submission, nobody can say; it speaks for itself that nobody can say that that does enhance the value of the undertaking.

That is one instance which I suggest is a perfectly clear-cut instance. (

Then there is another instance; it is only a small one, and the figures are not so large, but I am just picking these instances out, and for this purpose the size of the figure does not matter, because the thing is the illustration that the instances afford.

In the accounts of the Great Western Railway Company, on folio 6, there is an item "Newport Sidings and Box Factory." It is only £6,650; but, as I say, the size does not matter. If I understand it, and if my instructions are right about it, that was a siding which was put up in order to connect with a factory which was erected for war purposes, a factory which, although I believe it is still in existence, is to all intents and purposes derelict, and owing to its situation it is never likely to come into effective use again. Those sidings, in my submission, on the face of it, have not enhanced and cannot enhance the value of the undertaking in the sense in which I am asking the Tribunal to construe those words.

Again, take an illustration which rather leaps to the eye—the Glenegles Hotel. One must be very careful in what one says about the Glenegles Hotel, because, although I am sure it is a very delightful place, the Glenegles Hotel, as I suppose is almost notorious, was hotel as to which, no doubt, at the time when it was started, it was never contemplated that it would cost anything like the amount that it has cost to put up. The total cost has been something like £400,000, putting it in round figures, but £381,637 is the figure which has been given in respect of it. Now, the Glenegles Hotel, as we know, is shut up in the winter months; at least if the advertisements which they put in the "A.B.C." are correct, it is shut up in the winter months, and, apart from any running expenses whatever—and they must be enormous, because the place is a huge place—in order to get 5 per cent on the money that it has cost them to put it up, they start with £20,000 a year. One would very much like to know whether the

London Midland and Scottish Railway Company represent that (a) as a hotel concern that is a profitable concern taken by itself; and (b) taking into account the amount of additional rail passenger traffic which they carry over their line to Glenegles, it can ever represent anything like the additional cost of the original outlay *plus* the working expenses; or in other words, whether the hotel, however beautiful it may be as an amenity to the railway company, can ever be an enhancement of the value of the London Midland and Scottish Railway Company's undertaking.

There are three illustrations of the sort of thing which I am submitting. Out of all this lumping together of all the capital expenditure the Tribunal are, so to speak, asked to assume that everything in it must necessarily enhance the value of the undertaking, because the Directors at the time when the expenditure was made thought that it was a good thing to do. These are three items which I suggest illustrate the point that I am putting, and which, on the face of it, call for some explanation.

I ask the Tribunal to be good enough to say quite broadly which is the right principle, because there are three principles, any one of which the Tribunal may lay down. If the Tribunal will indicate which is the right principle, then we shall know where we are with regard to attacking the various items.

President: Have you got a great many more of these items in your schedule, and can you let us know what they are, at some time or another? You will see that probably you will have to work with a somewhat broad axe, will you not, because it is not worth while chasing every little butterfly that gets up out of the covert.

Mr. Merriman: Oh, no. I want to be perfectly frank about this.

President: I quite see the point about these specimens that you have been putting to us, but each one of those, I presume, could be disposed of quite clearly and without very much difficulty to either party. Now, have you any large number of cases which would come under those heads, otherwise than the schedule? I mean, can we not know at some time or another what are the items which you would like to challenge, either upon this principle or upon any principle, because you have said sometimes—or someone has said—that there are some things which leap to the eye. I do not know this schedule, and nothing has leapt to my eye in particular, and, therefore, I should like you to tell me what the things are.

Mr. Merriman: Might I try and put to you once more what my submission is?

President: I understand what your submission is.

Mr. Merriman: But with regard to any item, if the contention put forward on behalf of the railway companies is right (namely, that because a work has got some realisable value or because it earns some profit, however small, without any reference to the comparison with what it has cost to put there, it is an enhancement of the value of the undertaking) then I say that I should think it is impossible for us to challenge one item in the whole of the schedule; or, at any rate, none of them that are worth challenging.

Take for example the hotel which I have just mentioned. Of course, there is some value in the bricks and mortar, and there is some value in the site for realisable purposes; and if that is the test, then it is not worth our while to spend one-halfpenny upon investigation of any sort or kind, and I do submit that, unless there is some expression of opinion as to whether that is the right view upon which to proceed, it is a waste of time and a waste of money to ask us to do so in ignorance of what will be the view taken by the Tribunal.

President: Is it quite that, because you yourself, without any directions, have been able to select these items for our consideration, I am only asking you: Are there any more similar items?

Mr. Merriman: Then I am afraid that I have not made myself clear, and I am sorry. I have selected these items as illustrations of what we say is the

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principle of non-enhancement. If the railway companies are right that everything upon which capital has been spent, and which can be shown to have some value, is an enhancement of the value of the undertaking regardless of whether or not that value is comparable to the cost of putting up the work, then I say that they are right as to everything in the schedule, and it is not worth our while to investigate one single thing. But if, on the other hand, the view that I am putting forward is right, namely, that you have got to see whether any possible return from it is comparable to what it has cost to put up, then it is worth our while to put cases before the Tribunal and to incur what must necessarily be a great expense in investigating the various matters.

President: You say, "If the return is comparable to what it cost"; but there may be other considerations. Supposing, for instance, we take your £1,000,000 and your £40,000. Suppose that you were to say, "Here is a case where it only brings in £20,000. Decide at once that the railway are wrong," we could not under those circumstances decide at once, without knowing what the railway company had to say.

Mr. Merriman: Nor should I ask you to do so, because in the return I include the factors which you yourself illustrated as being factors which would have to be taken into account, namely, the contribution to the earning power of other parts of the undertaking, and factors of that sort.

President: I do not know until I investigate the case whether it has that attribute or not.

Mr. Merriman: Of course you do not; but what I am submitting to you is that it is no use our attempting to bring forward cases and to substantiate them by the sort of calculations which will have to be made in order to deal with the point that you are putting—which quite obviously would have to be met—and investigating, as I say, here, there and everywhere, up and down the country, unless we know that at any rate the view which is being put forward on the other side is not the view which will eventually prevail.

The view put forward on the other side is that if you can say that regardless of what its comparative value is, a thing has got some value (that is to say, it can be sold even if it is only sold for a song; or that it brings in a little, even if it is only 1 per cent.), therefore it must be taken as being an enhancement of the value of the undertaking. As I have said, unless we know that that view is wrong, then it is not worth our while to investigate a single item, because under those circumstances, we would be prepared to give up the whole lot at once, rather than spend any time upon it.

That is why I am asking you to give us some line as to what "enhancement" is; and I do say, with all respect, that unless we do get some guidance about that, it really is not possible for us to go on.

Mr. Locket: Would it involve such a long and costly investigation as you suggest, for you to furnish us with a list of the items which you consider should not be deemed to have enhanced the value of the undertaking, together with such arguments in support of them as you have presented to us this morning? If you did that, then it seems to me that you would be shifting the onus on to the railway companies; they would have to answer it, and if their answer was not satisfactory, possibly you might apply for an opportunity of controverting it.

Mr. Merriman: I am very much obliged for that suggestion, and with regard to it, may I just say one thing—

Mr. Locket: Before you say that, there is another point which has occurred to me, and it is this: Would a hard and fast definition, even if we could see our way to lay down such a definition, be of any real assistance to you? I cannot help thinking that it is very doubtful whether it would. I think that the result might be that it would involve the shifting of one or two items from one of the categories that were indicated earlier on to another category, but I

do not think that it would have a much greater effect than that. I am inclined to doubt, too, whether any definition that we might lay down would be universally applicable, because it does strike me that the "enhancement" might alter in character and in degree according to the nature of the work in question.

Mr. Merriman: Yes.

Mr. Locket: Those are only points that have occurred to me. I have not discussed them with my colleagues at all, but they are things which have occurred to me more than once.

Mr. Merriman: Let me put it again in the way in which I was putting it last, in answer to that suggestion. It may be that I am asking too much in asking the Tribunal to lay down a hard and fast definition of "enhancement"; I quite see that that may be rather an unfair thing to ask them to do, so to speak, in the air. I quite see the point about that, but what we do want is to get away from the definition of it—and I have illustrated that by the instances that I have given—which is the contention of the railway companies here, namely, that if you can see any value of any sort in an item, it must have enhanced the value of the undertaking.

President: Will not these considerations be before us when you bring specific cases to our notice?

Mr. Merriman: I am going to accept the suggestion that these specific cases should be put in the way that I am saying, but I still say, with the greatest submission, that unless we know that that view at any rate is not the view which is going to prevail, it is probably no use our putting forward even one single case. I do hope that I am making myself clear.

President: Oh, yes, absolutely; and we are going to hear what the railway companies have to say about it.

Mr. Merriman: Then may I just say this, that I accept with gratitude the suggestion that we should put forward in three categories the items which (a), on the face of it, we say have enhanced the value of the undertaking—

Mr. Locket: You can ignore those, can you not?

Mr. Merriman: Yes; we do not want any dispute about them, and, as you say, we can ignore them, and we need not deal with them at all. Then (b) those which we say are in doubt about; and (c) those which we say, on the face of it, do not enhance the value of the undertaking. We will prepare and send in lists on those lines. I am told we can do it within a week; at least, we will try to; but I daresay you will give us a day or two's grace.

Mr. Jevson: That does assume that is the intention of the Act. Going through all those items does seem to me involving reading into the section the words "unless it can be shown that any item of such expenditure has not enhanced the value of the undertaking." I think it is quite possible to read into the section that the expenditure as a whole has to enhance the value of the undertaking. You have dealt with that point. You have assumed, having regard to what Mr. Locket has said this morning, that you are entitled to take these things in categories; but I should like to hear what you have to say with regard to dealing with it in the words of the section, that is, that the total expenditure claimed for has not enhanced the value of the undertaking. You have to read into it the words "unless it can be shown that any particular item of such expenditure has not enhanced the value of the undertaking."

Mr. Merriman: I follow that, but surely the section is only open to one interpretation in that respect.

Mr. Jevson: I would like to have it clear.

Mr. Merriman: I am much obliged to you. But supposing, for the sake of argument, that the total claimed on capital expended is £15,000,000. Now there are, for the sake of illustration, 20 items relating to quite different sorts of work, and about £1,000,000 is spent on it. Now, on five of those it could be admitted by the railway companies that they

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had really been derelict items which were not put in. Assume, nevertheless, that they try to put them in, because they say "everything that we choose to put into this schedule is in fact capital expended," therefore you have to see whether the whole of it has enhanced the value of the undertaking. That surely will not do. You cannot put forward a claim for any form of allowance or remuneration or reward by lumping in a lot of things together which you say are bad, and saying you have to take or leave the lot.

Mr. Jepson: You cannot average them.

Mr. Merriman: No.

Mr. Jepson: I noticed when you were reading out some quotations, I think from Mr. Cope's evidence, he said, "Yes, on the average they do enhance the value of the undertaking." That is rather a suggestion that some may not, that some will, but on the whole they do enhance the value of the undertaking, I am only expressing the same view, having regard to the statement.

Mr. Merriman: It seems to me, with all respect, rather a dangerous view; because in fact we know that capital was not raised for these items at all in the lump. It is going to be raised now, or has been raised now. In fact, each separate expenditure was a separate capital expenditure financed by taking that particular sum out of the free reserves, putting it quite generally. Well now, the question is with regard to the insertion of those—with regard to any item of the capital expenditure in respect of which new capital is being raised—did that, or did that

not, enhance the value of the undertaking? Now, if you look at them all together and you raise the capital in the lump, *ex post facto* that does not change the effect, that in fact it was capital expenditure which took place item by item, and in respect of which, theoretically, capital ought to have been raised at the time. It is no good merely lumping in all these items into ten pages of schedules and saying: "This is in fact what we did spend, and there are the remainder of the items," and to say that any one of them enhanced the value of the undertaking surely is a most dangerous suggestion.

Mr. Jepson: You will forgive me raising any point that occurs, because I do not want them to be left over without giving you an opportunity of dealing with them.

Mr. Merriman: But I do submit that there can only be one possible way to deal with the items. Just assume, as ought to have been the fact, that the capital was raised at the time, and then see whether it is a capital expenditure which enhanced the value of the undertaking.

Mr. Stafford Cripps: I do not know whether I might ask the indulgence of the Tribunal and of my learned friends to recall Mr. Quirey and ask him just one question, a question which has been raised by my clients since yesterday. It is only that they want his assurance as regards a certain point. I do not know whether it would be convenient if I might put a question to him before I address the Tribunal.

President: I think so.

Mr. John Quirey, recalled.

Further examined by Mr. STAFFORD CRIPPS.

5553. I am sorry to trouble you again, but it is a question with regard to such items as rolling-stock which I want to ask you about: Will you take, in order that I may illustrate the point, Folio 6 of the Blue Book with regard to the item of wagons, £22,221. You see the item there. Now, that £22,221 represents, I understand, a proportion of the purchase price of wagons?—In some cases, yes.

5554. The other portion comes from the Depreciation or other Fund?—From the Renewal Fund.

5555. Now, the sum which is taken from the Renewal Fund is a sum which is first of all available there—it must be available there, obviously—and secondly, it is based, I suppose, upon a normal depreciation?—Yes, the provision for renewal is made upon an estimated life.

5556. Therefore, the share which capital pays towards the purchase of the new rolling-stock is determined by the basis upon which the Depreciation Fund is accumulated?—Oh, no.

5557. Well, then, I do not quite appreciate what the last answer was. Perhaps you will explain it?—The amounts charged to capital in respect of wagon stock would be in respect of the additional carrying capacity of the stock, that is, say, a 12-ton wagon

put into service and a 6-ton wagon scrapped, or an 8-ton wagon scrapped.

5558. No part of it would be in respect of any renewal at all?—No, nothing in the nature of a renewal would be charged to capital expenditure.

5559. That is to say, talking of a renewal as a normal renewal?—Quite, a renewal of like with like.

5560. Now, supposing you get abnormal conditions, and your renewals have to be more frequent than is provided for in your Depreciation Fund upon the basis upon which you put aside money for that purpose, would the extra cost fall on the Capital Fund?—Oh, no. If the Renewal Fund should by any means become exhausted, the amount would stand in suspense until it was liquidated over future years.

5561. *Mr. Jepson*: Until some other scheme had been provided for putting the renewal on a proper basis from experience?—Yes, out of revenue.

5562. *Mr. Stafford Cripps*: So that there would be no danger of any of the abnormal wear and tear, or anything of that sort arising during the war, falling to any expenditure upon the Capital Fund?—I can assure you on that point.

Mr. Stafford Cripps: I am much obliged. That is the point I wanted to ask you about.

(*The Witness withdrew.*)

Mr. Stafford Cripps: I am not quite certain what the procedure is which is being adopted now. I understand the procedure would be that the Tribunal would now fix the amount under 58 (1) (b), but as I understand it now, you are now only going to proceed to lay down some further principles, and you are not going to proceed to fix any amount. The matters upon which I wish to address you are matters dealing with certain specific items, and if it would be more convenient that I should postpone those matters till a later date, when you are dealing with specific items, I should certainly do so.

President: It might be convenient for us to hear in outline what your points are, in the same way as we have heard Mr. Merriman's points in outline; it may be that we should decide to deal with them at a future date.

Mr. Stafford Cripps: If you please, Sir. The Tribunal should, I suggest, bear in mind that the onus here as regards the first part of section 58 (1) (b), that is to say, all except the last sentence, is upon the railway companies, and specifically the Tribunal will remember that in their decision in July last, with regard to the question of expenditure incurred upon capital account, they very definitely laid down that before they determined any matters arising under that with regard to investments in other undertakings they would have to have before them the whole of the circumstances in which such investments were made; and it is difficult, in those circumstances, to criticise or to make one's point clearly upon those investments, which is one of the points I want to deal with, as the railway companies have not provided us—with whether they intend to do so at some future stage

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I do not know—with all the particulars and evidence which the Tribunal said it would require before considering this point. Therefore, with regard to the question of investments, it is a little difficult to be at all specific in putting forward an argument, because those facts upon which the Tribunal has said it will make its determination are not at present before us.

If I may take one instance of those investments, the London Electric Railway, which is on Folio 6 of the London Midland and Scottish Book, amounts to £819,000. Now, the question which arises upon that, in my submission, is whether it can be called capital expenditure, and that is the very point which, as I first stated, the Tribunal have said they will not determine until all the facts are before them. Therefore, I cannot at the moment expand upon that, because there are no facts at all before the Tribunal.

Now, secondly, assuming that it is capital expenditure, and assuming also that capital has been raised to meet it, and also assuming that it has enhanced the value of the undertaking, then the Tribunal has to enquire as to what allowance is necessary to remunerate adequately that capital. Will you assume this, Sir, that the London Midland and Scottish Railway Company issue a special stock, £819,000, in order to lend it on to the London Electric Railway Company? Now, as regards that stock, it would be remunerated by the sum received, 4 per cent., from the London Electric Railway Company, and if the London Midland and Scottish Railway Company had to pay more than 4 per cent. for raising the capital, all that this Tribunal would be required to give as an allowance—all that would be necessary adequately to remunerate that capital—would be the balance of 1 per cent.; so that, as far as any such sum as this £819,000 is concerned, all that the Tribunal could possibly award under 58 (1) (b) as a necessary allowance—because the word, as you will remember, Sir, is “allowance”; it is not “interest,” or any word such as that; it is simply an allowance that will be made by the Tribunal—will be such sum as will bring out what is received from the London Electric Railway Company to that sum which they have to pay to the people from whom they borrowed the money, and it cannot possibly be a greater sum than that. It may be, of course, that the Tribunal will say that this sum of £819,000 is already adequately remunerated, that the railway company lends it at 4 per cent. and that is an adequate remuneration for it; and whereas the railway company have now specifically appropriated from their capital a capital sum to serve this loan, having made the loan originally out of their reserves, they have now resolved to put aside a sum from their capital specifically for this loan—I understand that is the system which they have adopted under 58 (1) (b)—that they must be held to have considered that that capital sum was adequately remunerated by the amount which they received in dividends from the London Electric Railway Company. Now, Sir, that principle, I suggest, applies to all investments in companies outside the amalgamation except the J. Joint Lines, where, as you stated in your former decision, investments in J. Joint Lines clearly come in, because the companies share the receipts from those lines. If that is the right view, it will be necessary to go through the whole of these schedules and to take each case and enquire whether the money is already adequately remunerated; and, if not, how much more interest in each case the Tribunal should award as an allowance adequately to remunerate that capital. It is impossible, unless the full facts in each case are laid before the Tribunal by the railway companies, for this Tribunal to come to any definite determination on those matters, and I only indicate that view as showing the necessity for full details being put before the Tribunal.

Now, Sir, there is another point which I raised in cross-examination of Mr. Quirey yesterday with regard to steamboats. This point was raised originally in July last, and I was somewhat disappointed to find yesterday that Mr. Quirey was still without any

information as to what had happened to a sum of 2½ million pounds which the Companies received from the Government. When dealing with other cases where steamboats have been sold, the companies have quite properly, credited the sum received for those steamboats in the capital account under 58 (1) (b), but, for some reason which Mr. Quirey, I venture to say, could not explain, when they sold £2,500,000 worth of boats to the Government there is no credit whatsoever for that sum under 58 (1) (b). If, as they say, it is true that that sum has been set aside as a special reserve, and that in future when steamboats are bought they will be paid for out of that special reserve—but, in my submission, that is an extremely unsatisfactory way of dealing with the matter—you have some special reserve which should exist in the books of the company, which no one can have any control at all, which may or may not be forgotten, which may or may not be spent upon steamboats in the future, and that money, when so spent, may or may not be brought into 58 (1) (b) or 59 (3); and I submit it is quite clear the proper way to deal with this 2½ million pounds is to credit it to the capital account under 58 (1) (b), and to debit anything that had been spent out of it. In that way you will have the position regulated perfectly fairly as between the railway companies and the users of the railways, and there is no other way, I submit, in which that position can be regulated properly.

Therefore, Sir, I ask you to decide, as regards that, that the railway companies shall give a credit under 58 (1) (b) of 2½ million pounds. I do not know how it is divided between the various companies, but I submit that we ought to be at liberty to bring in as a capital expenditure any sum or any part of that sum which has been expended upon capital.

There is only one other point, Sir, with which I want to deal: it is a point which I asked Mr. Quirey a question about yesterday, and that is the question of the sale of certain investments by the company of their own stock. You will remember, Sir, that that question was raised in July also, on page 139, and I should just like to read one or two questions there. It starts at Question 2709, and it is in the cross-examination of Mr. Albert Ernest Williams: “(Q.) You said something about some shares of your own which you had held and which you had sold during 1923?—(A.) Yes, in the London and North Eastern Railway. (Q.) Yes. What was the amount?—(A.) The amount that I mentioned was £50,000. (Q.) Were they shares which came to you owing to the amalgamation? Did they become London and North Eastern shares owing to the amalgamation?—(A.) They became London and North Eastern shares owing to the amalgamation. They were shares held by the Great Central Company in the Wrexham and Ellesmere Line. (Q.) Was that the only bunch of shares that so came to you?—(A.) No. There was some Chatham Arbitration Stock. There were others. I only quoted that as an example—the Chatham Arbitration Stock was £300,000. (Q.) Never mind about the others, we will take that as an example. In 1923 you sold those shares?—(A.) That is so. (Q.) What did you do with the money that you got from them?—(A.) I passed it to the credit of the account to which, on adjustment, the shares had been removed after leaving the permanent capital account of the company. May I perhaps make that a little clearer? (Q.) Yes, perhaps you could?—(A.) On amalgamation, those shares, which up to that time had formed part of the capital expenditure of the Great Central Railway Company recorded in their Account No. 4 of permanent capital expenditure, were removed to open account and would have appeared as a special asset in the balance-sheet in future years if they had not been sold.”

Now, Sir, my submission is that as regards all such shares the credit which has been admitted and granted by the railway companies on the sale of the shares should not take place only because there is a sale, but should take place when they are removed to open account, because that is the moment when the rail-

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way company become able to sell them without interfering with their capital account, and at any moment after those shares have once been removed from the capital account and put in an open account, the railway companies are at liberty to dispose of them and to use the proceeds as they wish. Therefore, whereas in 1913 they were earning moneys which were coming into the revenue of the company when they sold them and disposed of the moneys in any way they liked, they ceased to be part of the capital of the company which is earning the revenue, and it is quite true that actually in the accounts it may not matter until such time as they are sold; but the true criterion of when they should be deducted from the credit in the capital account under 58 (1) (b) is when they are removed from the capital account and put into an open account, because that is the moment when the railway companies do become able to dispose of them freely.

Therefore, in my submission to the Tribunal, although the users are very grateful for the credit which they have got, and it may be the credit which they have got is the whole credit which they are entitled—

Mr. Locket: Is that in accordance with ordinary accountancy practice?

Mr. Stafford Cripps: Is which—to remove them to open account?

Mr. Locket: The suggestion that you are putting forward now that they should be credited to capital account when they are removed to open account.

Mr. Stafford Cripps: Well, I only make the suggestion because the railway companies have admitted that when they are sold, and the money goes into the reserves, then it is proper that they should be credited to capital account. What I was suggesting was that there is no difference at all between selling them and taking them out of your capital account. The real thing which makes them credit the capital account is the fact that you remove them.

Mr. Locket: It is an accountancy question, is it not?

Mr. Stafford Cripps: I quite agree it is an accountancy question, and I do not wish to attempt to lay down how the railway companies—

Mr. Locket: What you are laying down is in accordance with ordinary accountancy practice.

Mr. Stafford Cripps: Yes, I should submit it was; and, moreover, I submit the admission by the railway companies that this is a proper credit when the sale takes place covers a submission that it is a proper credit when once the shares or stocks, or whatever they are, are removed from the capital account, and made available for sale. That is the real criterion when they cease to be part of the account for which the railway companies have got to account, and they get merged either in the reserve or into some other fund into which we cannot trace them.

If, of course, they made capital expenditure out of that money at some future time, they would be entitled to bring that in, and get their 5 per cent. on it, or whatever it may be, but as soon as you get an admission from them that the shares which have been sold must be brought into credit to the capital account, I submit that quite clearly covers the submission that shares removed from capital account to open account, making them available at any moment for sale, must similarly be dealt with.

Now, those are the only three points which I have to put before you: Firstly, as regards adequate remuneration on investments in other companies which are not J. Joint Lines, and which are not one of the Amalgamated Companies themselves; secondly, as regards the 2½ million pounds received from steam-boats; and, thirdly, as regards shares which have become shares in the amalgamated undertaking itself, and which have been removed from capital account to open account.

Mr. Herbert Morrison: In common with learned Counsel who addressed the Court, I am in a difficulty as to arguing my case under this particular sub-

section, which admittedly puts upon the opponents of the Railway Companies the onus of arguing that given works do not enhance the value of the undertaking, and I am venturing to submit to the Tribunal on the case that I am putting before you that there is *prima facie* reason for doubting whether they do enhance the value of the undertaking; that in all cases right through the schedule there is a case that the Tribunal ought to be provided with a new schedule which should not only provide these bare items which are claimed, but ought to add a short note explanatory of what the items mean. There is, for example, Parliamentary expenses. Parliamentary expenses may mean many things; they may mean the actual Parliamentary fees, fees to learned Counsel, and so on; but it is well known that they usually also include hospitality expenses which are paid to certain persons in order that they may entertain other certain persons, and it is quite an arguable point as to whether that is legitimate, and in some cases from the point of view of public policy a proper Parliamentary expense. So that, quite apart from the point as to whether Parliamentary expenses at all add to the value of the undertaking, there is the point as to whether it is properly spent.

Secondly, Sir, I submit that we ought to know the Bills in connection with which the Parliamentary expenses were incurred, and whether or not those Bills were successful when they went to Parliament. If a Bill was promoted in Parliament and was defeated, I submit that it can hardly be argued that such Parliamentary expenses would enhance the value of the undertaking. Therefore, with regard to that question, my submission is that we ought to have details of the Bills in respect of which Parliamentary expenses were incurred, and we ought to know whether or not the Bills were successful.

Then there is the point that has been referred to as to mineral support in a case of mining operations endangering the stability of the railway track. My submission is that that is not an expenditure which enhances the value of the undertaking; it is expenditure which prevents deterioration in the value of the undertaking. It has a negative virtue; it stops something happening which might otherwise happen, but it is not expenditure which enhances the value of the undertaking, unless, of course, the company did work part of the coal as a coal mine, and to that extent probably it would enhance the value of the undertaking.

There are in the schedules several items of land purchases, but there is no indication for what reason in the main the land has been purchased; whether it has yet been brought into use, or whether it is likely, and if so when, it will be brought into use. Merely to throw at the Tribunal, and at the Opponents of the Companies items of land at a certain place without any particulars as to the land or why it has been purchased, and what it is being used for, is hardly the thing. It may be that some of the land included in the claim under 58 (1) (b) ought in fact to be included under 58 (1) (c), if it ought to be included anywhere, and that would be much more useful for the Opponents of the Railway Companies, because then the Railway Companies would have to prove that it did enhance the value of the undertaking.

Similarly in the case of loans, it seems to me, on the face of it, an extraordinary thing to claim loans and subscriptions to other railway companies. They are investment, probably, of surplus moneys. It does seem to me, on the face of it, a very doubtful claim, and certainly we ought to have the details of it, and we ought to know exactly what it means. Without that information it is very difficult to judge these items. They are a collection of items got together: they may answer strict book-keeping accountancy, but whether an independent valuer would in each of those cases say that they enhance the value of the undertaking is an exceedingly doubtful proposition; and I do very seriously submit to the Tribunal that

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instructions ought to be given to the Railway Companies that they really must not treat the Court in this way; that they must not only throw a series of bald items at the Tribunal which may mean anything or may mean nothing, but that they must submit notes together with the items which give a short compact history of the expenditure concerned and the relative facts which ought to be before the Tribunal, and ought to be before the rest of us engaged in the case.

Otherwise, the only thing that one could do would be one of these three courses. First of all, you could go to the companies and examine their books right the way through; you could question the officials of the companies and get the facts as to that expenditure. That would obviously be a very, very lengthy process, and professional people would have to be employed, and it would be a very expensive process.

The second course which one might adopt within the rules of the Court would be to cross-examine Mr. Quirey—and none of us want to treat him harshly, because he has been a very courteous witness on every one of these items in the schedule through the four volumes of the railway companies' claim, and that would be very, very rough on him. It would occupy a lot of the time of the Tribunal and the rest of us engaged in the case, but unless something of that kind is done one really does not know what is what.

The third course might be to go on to the ground and investigate all this capital expenditure—actually on the ground itself, taking the appropriate General Manager with one and cross-examining him on the spot and getting all the facts. Unless one of those three courses be adopted, short of the companies providing us with the facts, we really do not know where we are. Moreover, even in a preliminary sense you cannot judge of the soundness of the claim without there is a proved printed statement as to what the claims really mean. One ought, therefore, to have that statement so that we can tell where we are.

Now I want to come to the last point that I am venturing to raise. My submission is that the change in the front of the companies is really an evasion of what happened before the Tribunal decided, and the Court of Appeal upheld the Tribunal, that the claim as made, in so far as the capital expenditure out of free reserves or other monies of that kind was not properly made, that that was not capital raised or provided. The wording of Section 58 (1) (b) is,

"Such allowance as may be necessary to remunerate adequately any additional capital which may have been raised or provided." The claim of the companies was when they put the schedule in that that capital had been raised or provided, and yesterday learned Counsel who leads for the railway companies admitted that the only reason they are now proceeding to raise the capital and provide the capital in accordance with the judgment of the Tribunal, confirmed by the Court of Appeal, was technically to comply with that judgment which had been issued.

My submission to the Tribunal is that surely the Tribunal is entitled to take the view that this is a mere evasion of a legal judgment which has already been given; it is a purely technical compliance with a legal judgment which has been given, and surely the Tribunal is entitled to say: We must judge upon this claim as to whether the capital had been raised or provided at the time the railway companies made their claim. If the railway companies, subsequent to a legal judgment, say: We accept—as of course they must accept—the decision that it had not in fact been raised or provided, but now that we will by resolution of the directors, where necessary confirmed by shareholders' meetings, proceed to raise or provide that capital in accordance with the legal decision, that seems to be proceeding to act in a way that they ought to have acted before, and before the legal decision was given, but subsequent to the legal decision and for the purpose of evading the real purpose of the legal decision.

The real truth is, as is shown in the Judgment of the Tribunal, confirmed by the Court of Appeal, that at the time the railway companies deposited their claims to the extent to which they had used capital in free reserves, they had not raised or provided that capital, and the section says that it is capital which may have been raised or provided. I therefore submit that the present claim of the companies in this respect, in so far as it is expenditure which was, in fact, not made out of capital—provided to meet out of capital, it was in free reserves, or any other fund, is a most obvious evasion of the Judgment which the Tribunal gave and which the Court of Appeal have upheld.

Mr. Locket: At what date do you say the railway companies must have raised or provided the capital?

Mr. Herbert Morrison: Prior to the date of depositing the claims under the section.

Mr. Locket: Is there anything in this section to bear that out?

Mr. Herbert Morrison: I think so.

Mr. Locket: Take the section as a whole and read the beginning. Is it not at the date when the standard charges are to be fixed?

Mr. Herbert Morrison: I appreciate that difficulty. I appreciate that it could be interpreted so, but the Tribunal could say that the capital must have been raised at the time the standard charges are fixed.

Mr. Locket: Does not the section say so?

Mr. Herbert Morrison: I agree that the section says so before you come to the paragraphs of Sub-section 1, but is still the fact that Sub-section (b) says: "May have been raised or provided."

Mr. Locket: At the time when we are considering the fixing of the standard charges?

Mr. Herbert Morrison: It is capable of that interpretation, but my submission is that it is also capable of interpretation, not that the railway companies can evade a legal judgment, and admittedly on the claim of their own leading Counsel proceed to raise capital in order to comply with that judgment. But surely the Tribunal is entitled to say that this is an evasion and the companies should have raised or provided it before. Surely the question of the intention of the railway companies does come in. It was clearly the intention of the railway companies when in fact they did finance these capital works, in some cases where they used free reserves, that they were not going to raise capital for the purpose; they did not want to incur the extra interest charges which the raising of additional capital would involve. That is quite a sound conservative policy which is also engaged in; they were not going to raise capital for the purpose at all; they were going to meet it out of accumulated reserves; and the change of policy has been made subsequent to a legal decision in order to bring charges in which otherwise could not have been brought in. It may be that technically the claim could be allowed, but my submission is that the Tribunal could also say that the Tribunal must judge on the claim as it was before us in the companies' claim at the date at which the claims were deposited. I submit that point for the consideration of the Tribunal.

These are the points which I venture to submit to the Tribunal, and I would ask that the Tribunal should direct that further information shall be put before us in regard to those claims, because it is really impossible on a bald list of works which are not even properly described, and which cannot even be properly identified, even if we went to the place to find them. I submit we do require further information in addition to the other points which I have put, with respect, before the Tribunal.

Mr. Worrall: So far as I can see, it seems to me this is a claim for interest at 6 per cent. on £10,614,830. Well, Sir, these various schemes allow an interpretation on your rulings. We heard the learned Counsel in opening state that there were reservoirs of capital which are utilised by the railway companies. This term was used again and again in the Court of Appeal; these reservoirs into which the

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companies can dip, and they utilise these reservoirs for the purpose of paying for works. The whole thing, so far as the public are concerned, resolves itself into an account of receipts and payments, because we have got our receipts; they are easily arrived at. On the other side, the payments are hard to arrive at, because most of these payments are hypothetical and cannot be calculated except by some scheme which is to be laid down by the Tribunal.

It depends, Sir, on the way that this credit side—if I may use the cash-book credit and debit—is padded out with all sorts of hypothetical calculations as to what the public are going to get; because if you are going to squeeze in every conceivable amount on your payment side, if it is hypothetical or actual you arrive at this result: that your payments are going to exceed your receipts, and the consequence is, when the payments exceed your receipts, you are going to the public, and you are going to ask the public to put in more money for fares, more money for charges. Of course, the traders are fairly safe.

When they are asked to put in money they say: "Very well, we will put it in; we will pay extra rates, but we will pass it all on to the long-suffering public. They will pay; of course they will; it does not matter to us if the rates are higher; the public will have to pay higher costs of living, the higher productive charges which are made, because the traders have to pay higher rates. We have to resist this, this 10*l* millions, which I take it is now asked to be added in, or, rather, the interest on this 10 millions. Well, I do submit that this is such a hypothetical calculation to be made on this (1) (b) that it is almost impossible for you gentlemen who sit on the Tribunal to calculate it without first laying down some principle. So I take it that you are not going to allow this 10 millions odd.

The principle seems to me to be this: You get different degrees in enhancement of value, and it has been put in evidence by Mr. Cope, who is a very reliable witness and who speaks of this question of the degree of enhancement, because when you dip into these reservoirs you take so many million pounds and you use it on works. Then you deal with it in some such way as Mr. Cope has laid down, by a theoretical formula. This formula covers some 15 years, according to Mr. Cope; it may cover 20 years. This evidence is to be found on page III, Question and Answer No. 1834 and onwards. There it is distinctly laid down, and it is agreed by Mr. Cope, that this formula of enhancement is to be taken over a period of 20 years. This allowance under 58 (1) (b) is to depend on the enhanced value. If, for instance, a million pounds works is not being enhanced in value, it should be disallowed by the Tribunal, but the question arises: Is it enhancing the value of a work? If it is to be covered by a period of 15 years in the life of this particular work, how is the Tribunal to calculate as to what amount is to be added on to the credit side of this cash account?

First of all, having this question of degree, you start with your first year; the percentage is exceedingly small; it might be one-eighth per cent.; and then you go along on this formula until the number of years has elapsed. But we start with the year 1913, and we proceed along lines of calculation, and I do submit there is some sort of parallel between your position to-day and the position of the Special Commissioners who sit, I believe, in Kingsway and decide what sort of depreciation is to be allowed in connection with Income Tax. The printer wants so much depreciation for his works, and so on, and so there is a depreciation of works in connection with railway companies. There are different works which enhance more rapidly, and there are other works which do not enhance at all. There are certain works which remain absolutely stationary and can be disallowed. There are certain things which the railways do that result eventually in a loss rather than a profit. The enhancement is particularly on this question of a profitable work, because we get into the next section, and we see there there is an allowance for profitable

works. There are different reservoirs; you can take your reservoirs of milk and different classes, and you can dip into them, and you get your cream and you get your skimmed milk and curds and whey in different classes, and as you dip into these reservoirs and sort these things out, I take it that it will be your duty, I put it very respectfully, to differentiate between the different works.

I arrive at this conclusion, that we must have a clear and distinct schedule of these works. There must be a statement as to how each work enhanced in valuation, because on the calculation of interest on millions this £10,000,000 will depend upon whether we get a low calculation eventually as to the residuum of the balance of receipts covered by expenses. If the expenses are less, then we get a good balance of receipts upon which we can rely, and so the fares will not be increased. My submission to-day is this, to put it very clearly: that a statement should be at once made by the railway companies as to each specific work, showing how each specific work enhances the value of the undertaking, and then you would be asked to adjudicate on each of these works and say whether they enhance the value of the undertaking.

Mr. Clauson: I have been thinking how we can best assist the Tribunal. If I may take first the point of enhancement, I do not know whether this will suit the Tribunal, or be convenient to my learned friend. My learned friend is now in a position to furnish us with certain items which he queries. I will not take up the time of the Tribunal now by pointing out that these figures have been before my learned friend for a year. They have had every opportunity. I have in fact searched my books, but that does not matter; we want to see how we can best get on.

Mr. Merriman: If my learned friend is going to say that, when we wanted details about this we were told to wait for the amended claim. We got the amended claim, and it is a restatement in one line of the figures which have been produced before.

President: Let bygones be bygones for the present.

Mr. Merriman: That really was a little provocative.

Mr. Clauson: It was not intended to be provocative, and it was perfectly accurate.

President: Yes; it may be.

Mr. Clauson: If you please, Sir, as I understand, my learned friend will be in a position to furnish us in a week, or whatever time is found sufficient, with a list of the items in our (b) claim which they query, and I suggest to the Tribunal that they should furnish us with a list of those items, and under each item state the ground upon which they say that that expenditure has not enhanced. Of course, the onus is on them, and they are bound to state in as good terms as they can the grounds on which they allege that that particular item is not an item of enhancement. We will then put in a statement, so to speak a sort of defence, in which item by item we will say whether we admit the ground, or whether we question the ground, or what we say is the point which will elucidate the controversy as to whether that particular item has or has not enhanced. That we can do, I suppose, within a week or ten days, or some period of that kind after we get my learned friend's statement.

We have been looking at the dates, and I rather suggest this, if the Tribunal think it would be convenient. At present the 27th April has been fixed for Economics. Having regard to the intervention of Easter, I cannot help thinking that we shall not be ready with these statements much before that date, and what we suggest is that we should resume the consideration of (b) with these statements which we will then have on the 27th April, leaving Economics for that day; but let us continue with (b) and finish that before we deal with Economics; and then we can go on, on the 27th April, and subsequent days.

I want to point this out; that I think, however, that when we resume consideration of this matter my learned friend will be prepared to call what evidence he thinks proper in support of his querying

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of these various items. It may be that he will say that the circumstances are such that he makes out a *prima facie* case without calling any evidence. That is a possibility as to some of the items; whether it will be so or not I do not know. It will be for you to consider whether he has made out a *prima facie* case, throwing on us the onus of explaining the matter. When he has finished his case we shall call such evidence as we shall have collected.

I have been given an explanation, but it is an explanation I cannot give to the Tribunal, of course, without proving it. We shall be ready with our evidence to deal with these various points. It may be that on one of these particular instances it may form the foundation, possibly, of an indication of the view of the Tribunal on the principle. That is quite possible; and if it does, it may be the Tribunal will say: "If there are other items of this kind you must ferret through and find them, because we think they ought not to be allowed."

Supposing there was a decision by the Tribunal as a matter of principle that a particular type of item, a specimen of which he has brought forward, must be eliminated from the account, of course then it will have to be eliminated, but I venture to submit with great deference that by this procedure that I have outlined we shall soon get to an effective result; and I am bound to say, while I am prepared to deal with some of the propositions my learned friend has laid down, I should venture to deprecate the Tribunal attempting to summarise in the formula of principle any of the points which my learned friend has outlined. Of course, if the Tribunal wishes to attempt to do it, I will give the best assistance I can, but I cannot help thinking that the best course will be to take that course which I have outlined, if the Tribunal think it is convenient.

I have of course, something else to say altogether as regards the question of whether we have properly proved that we have raised capital and received that capital. That is quite a different point. I venture to submit that that would be the convenient course to deal with it. Then we will deal with Mr. Cripps' point. We shall be in a position to have the facts about it all.

Mr. Merriman: Before my learned friend passes from this point, may I just intervene with this suggestion on the point he has put as to the convenient way of dealing with the thing. It does seem to me that to make it so formal as he has suggested is rather an unnecessary elaboration, I mean for us to give particulars of the grounds on which we say each particular item that we are satisfied is not enhanced.

President: Give the best you can. You have raised various points with regard to various items already. What you have said so eloquently can be condensed with regard to those points and other points.

Mr. Merriman: What we are saying is that we can give the general particulars now and they ought to be enough for the purpose of raising the items.

Then with regard to the way in which the evidence should be given; that we should have to begin by calling evidence about these would not really, I venture to suggest, assist the Tribunal at all; because in the absence of investigating these things at present we are only being asked to give particulars of the items; we cannot give any useful evidence about them until they have been thoroughly investigated. The railway companies are the people who have got the information about this.

President: You will have to raise a *prima facie* case somehow. It may be, as Mr. Clauson says, it is a case of *res ipsa loquitur*; on the other hand, it may be a case where you may say, "My account thinks this is open to question, and this is the amount put together by the companies, and that is enough." Do not let us be too formal about this thing.

Mr. Merriman: I am sorry, Sir—

President: No, you are quite right.

Mr. Merriman: I am not trying to obstruct; I am really trying to help.

President: I am sure you are.

Mr. Merriman: I am suggesting that, as they have got the information, the better way would be for them, as we have told you what items we want dealt with, to give the evidence about it; and it may be that that will dispose of it without our going through a rigmarole.

President: No doubt you will have an opportunity of seeing about it when you are putting your case.

Mr. Clauson: Shall I now say, Sir, what I have to say about "raised and provided"?

President: Yes.

Mr. Clauson: I am not quite sure exactly how the matter stands.

President: Let me tell you how I understand it. When I came here I thought there was no doubt, on the railways' part, that they would say, "We have raised capital in respect of this expenditure;" but apparently when we got into Court your learned leader said, "Yes, we have raised capital since the expenditure, you must infer that it was in respect of that expenditure." Now, I do not quite understand why you are so bashful about saying, "We did raise it in respect of capital expenditure," because so far as I have read the papers I have seen that various people have gone about saying, "Look what we have to do; we have to raise this capital now because of the decision of the Court of Appeal on the Act." If that is so, what is the harm of your saying outright, and proving if necessary, "We have raised capital; the capital that we raised was in respect of this expenditure?" You have never said that point blank, as far as I can make out. You must not mix it up with the further view that we shall think because of that that the particular shareholder has bought a particular rail or a particular sleeper. That did not really enter into the matter. Will you explain, from that point of view, what is the attitude which the railway companies take up with regard to it?

Mr. Clauson: I can shorten the matter by saying quite plainly that I am in a position to show—if I have not shown already, but for the moment I am going to indicate that I have shown already—I am in a position to show that this particular capital which has been mentioned, and which we have either raised or are raising (I use that expression because in the case of one company it has in fact been raised, and in the case of the other the process is still continuing) has been raised in respect of this particular expenditure. It has been raised in respect of this particular expenditure in this sense, that it was raised in order to meet this particular expenditure, and if it were raised in order to meet this particular expenditure, I submit that as a matter of construction that is what the section puts upon us to establish—namely, that it has been raised in respect of that expenditure.

Now, as regards the London and North Eastern Railway, as I understand it, my friends have seen the whole of the resolutions and they say those resolutions are in such a form "that we have no doubt that the capital there mentioned was raised in respect of the expenditure in respect of which a claim was being made under (b)." If there is any doubt about it I will go through the resolutions, but I do not want to take up unnecessary time. I understood my friends to say that was all right, that they had gone through (as Mr. Macmillan said) the necessary ritual.

Let me go from that to the London Midland and Scottish Railway Company. I do not know whether the Tribunal have a document No. 9. It is headed "Copy of advertisement in the Times." That is a notice of the meeting for the purpose of raising, by the creation of new stock, £15,000,000, and Debenture Stock £9,000,000. That is followed by the resolutions which were passed at the meeting held

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on January 9. The first resolution is that under the powers conferred on the company the Directors be authorised to raise an amount not exceeding £15,000,000.

So what we have to get to so far is that the shareholders have derogated to the directors the raising of £15,000,000 of capital. The second one deals with over £9,000,000 of Debenture Stock. We need not bother about that for the moment because it was in fact Preference Stock.

Then on the same day there is a meeting of the Board of Directors. The Chairman referred to the resolutions passed at the Special General Meeting; then they are set out; and, after consideration, it was Resolved:—"That of the amount of £15,488,106, £7,500,000 be created and issued as 5 per cent. Redeemable Preference Stock, repayable in cash at par on the 30th June, 1955, and that the price of issue by £100 per cent., this stock to rank *pari passu* with the 4 per cent. Preference Stock of the company and be entitled in respect of every year ending on the 31st December to a fixed and preferential dividend at the rate of 5 per cent., payable half-yearly at the 1st July and 1st January out of the profits of the company. That no Debenture Stock be issued at the present time."

On the next page you find an extract from the Minutes of the Board of Directors:—"New Capital. After consideration it was resolved:—That of the additional capital of £7,500,000 raised by the creation and issue of 5 per cent. Preference Stock Redeemable on 30th June, 1955, £4,034,891 be applied in replacing the monies (not being the proceeds of Capital created and issued) taken from the General Balances of the Company and utilised to defray expenditure on Capital

Account incurred since 1st January, 1913, up to 31st December, 1923, which is not included in the Capital Expenditure forming the basis on which the interest was allowed at the end of the period during which the Government were in possession of the undertakings which now form the undertaking of the company, and that the balance of the said £7,500,000 amounting to £3,465,109 be applied to such of the purposes of the Company to which Capital is properly applicable as may from time to time be resolved by the Directors."

That is a plain statement by the directors of this capital which is being raised the necessary amount being applied to replacing the money which was being raised for the capital expenditure in the (b) claim as I understand the criticism it is this. It is said: That is all very well, but that was done after the capital was raised. We want you to satisfy the Tribunal that when the directors raised (because it was the directors who raised the capital, the right to raise it was derogated to them by the shareholders) the capital they had it in mind that they were raising it for this particular purpose, so far as concerned the necessary number of millions required for this particular purpose.

I confess I should have thought that these resolutions would suffice; but I propose, if the Tribunal will allow me to, to put Mr. Quirey into the box again and let him tell you what was the material before the directors when they made up their minds that they would raise this 7½ millions, and why they decided to raise 7 millions. If the Tribunal think it necessary I shall ask to be allowed to prove that.

President: Let him come into the box.

Mr. JOHN QUIREY, recalled.

Further examined by MR. CLAUSON.

5563. In July of last year the Tribunal gave the decision, with which we are all acquainted, on the subject of "raised and provided"?—Yes.

5564. That having taken place, were you present with the Chairman, or other directors, when the matter was considered as to what steps should be taken, having regard to that decision?—Yes. I was present at the meeting with the Chairman, and, later, the Chairman and some of the directors.

5565. Mr. Lockett: The Chairman of the London Midland and Scottish?—If you please, Sir, with the General Manager, and Secretary, and Solicitor, when we discussed this matter and the amount of stock to be raised.

5566. Mr. Clauson: Was anything said about the purpose for which the stock was to be raised?—The amount of stock to be raised was fixed at the amount necessary to meet the claim under 55 (1) (b). I myself made up the estimate of the amount that was required to be raised—7½ millions—to cover the amount claimed, to December 31, 1923, and the estimated expenditure in 1924 and 1925; because we thought the fixation of charges would be on January 1, 1926.

5567. You can, if necessary, give the figures showing what amount you thought was necessary, as a matter of estimate, for the expenditure in 1924 and 1925 which would ultimately be brought into a (b) claim?—Yes. The claim as lodged was £3,959,000; I put that at £4,000,000. The capital expenditure for 1924 had not been ascertained at that period, but we knew the figures up to the end of November and I estimated that the full amount of expenditure for 1924 would be £1,750,000; it turned out afterwards to be £1,801,000; and I thought that, looking at our capital commitments, possibly the outlay in 1925 would be about a similar sum.

5568. Was it as a result of that meeting and those discussions that the notice was put in "The Times" convening the shareholders' meetings to authorise the raising of a large sum of stock?—The notice in "The Times" had been published before that; that was for

the purpose of creating the stock; but this meeting was in connection with the amount that the Company ought to raise. That took place before the meeting of the shareholders and before the meeting of the directors where the amount to be raised was settled.

5569. Mr. Lockett: It was between the date when this notice appeared and January 9 when the meeting was held?—Yes. I think it was about January 5 or January 6.

5570. Mr. Clauson: Then the shareholders' meeting was held, and there was a directors' meeting held—the minute of which we have—immediately after the shareholders' meeting. Were you present at that meeting?—Yes, I was present at this Special Board Meeting when Mr. Thornhill explained the position with regard to the claim of the Company under 55 (1) (b).

5571. Did you gather from that meeting why the directors thought it desirable to raise, as is stated in their resolution, 7½ millions?—Yes. Mr. Thornhill explained the position to the directors at the request of the Chairman.

5572. And, I suppose, reported the opinion that 7½ millions was the figure required for that particular purpose?—Not merely for the claim lodged, but for the expenditure that would be incurred up till the first fixation of charges, as far as we could see it.

5573. What was the capital expenditure in respect of which that 7½ millions of stock was created?—It was the expenditure coming within 55 (1) (b).

5574. Expenditure which had taken place and which it was estimated would take place down to the fixation of charges?—Yes.

5575. Mr. Jeppson: Down to the end of 1925?—Yes, to the end of 1925.

5576. It might be that in 1926 a further amount might have to be raised to meet it?—Yes; we might have to issue further stock. The object, of course, was not mentioned by the Chairman at the special meeting of proprietors, but he did make it distinctly clear, at the Annual Meeting of the proprietors later, what was the object for which we had made the issue.

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MR. JOHN QUIREY.

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Cross-examined by MR. MERRIMAN.

5577. When was this capital raised. Just give me the date. I see that the circular is dated January 15, and applications have to be made not later than January 27?—That is so. And the amount was payable in two instalments—25 per cent. on application, and 75 per cent. on or before February 5.

5578. Then may I take it that the issue of the stock had been completed by February 5?—The applications had been received and the letters of allotment had been issued shortly after February 5.

5579. At any rate, within a day or two of February 5?—Yes.

5580. Now, the resolution to which my friend has more than once referred as a resolution in connection with the raising of the stock, is the resolution of February 26, 1925?—Yes, that was the first meeting of the directors after the money had been received.

5581. So far from its being a resolution on the

raising of the stock, it is a resolution that of the additional capital of 7½ millions raised by the creation of the 5 per cent. Preference Stock the exact amount of your claim here shall be applied to the amended claim?—Yes, the minute was passed, of course, after the amended claim had been prepared. We put into the minute the amount of the amended claim.

5582. Will you show me anything in writing before that date which explained to any shareholder or debenture stock-holder, who was invited to apply for this particular issue, a statement that it was to be applied for this purpose?—No, I cannot. The intention of the directors was quite well-known.

5583. I heard what you said about the intention of the directors. But no single applicant for this stock was told that it was being raised for this purpose?—Not officially.

Re-examined by MR. CLAUSON.

5584. At the Board Meeting on January 9, was anything said, do you recollect, by the Solicitor, as to the possibility that there might be a subsequent resolution?—Yes. As a matter of fact, the resolution would have been passed at the January meeting of the Board, but Mr. Thornehill and the Secretary and myself had not quite agreed on the wording of

it. We had discussed this matter pretty well on from the end of the year, but we had not decided on the wording of the resolution in time for our Board Meeting which was held on January 29. That would have been before the whole of the amount was received.

(The Witness withdrew.)

Mr. Clauson: On that I submit the matter is clear with regard to the London Midland and Scottish.

May I now go to the Great Western? I think the Tribunal have before them a note of a meeting of the Board of Directors on October 10, 1924; it is a minute of the Board Meeting. That resolution is in these terms:—"It was stated that at the meeting of the Finance Committee yesterday a discussion took place as to the course to be adopted for providing the cash which will be required in the early months of next year for dividend purposes and for meeting the exceptional payments to be made in respect of Income Tax, and that the Committee were of opinion that it would be desirable in this connection to consider the question of issuing Capital in respect of expenditure on Capital Account incurred since the 1st January, 1913, and not included in the expenditure referred to in paragraph (a) of Section 58, S.S. (1) of the Railways Act, 1921. They were of opinion that in the circumstances the adoption of such a course would be desirable, and that Capital should be raised by the issue of an amount of Five per cent. Debenture Stock. After consideration of the position the Board determined that the course recommended by the Committee be adopted, and agreed that steps should be taken accordingly. *It was resolved:*—That in pursuance of the authority conferred upon the Directors by the Proprietors there be created and issued £1,000,000 Five per cent. Debenture Stock of the Company, which will rank *pari passu* with the existing Five per cent. Debenture Stock of the Company. It was further agreed that the Stock be disposed of by sale on such terms as, after conference with Messrs. Greenwood & Co., the Company's Brokers, the Chairman and Mr. Laurence Currie may approve."

The Tribunal have been furnished with—but I really do not know that I need take up time by going through them—a series of proprietors' resolutions vesting in the directors the power to raise capital by the issue of Debenture Stock, which was carried out by that resolution. I do not think it is worth while taking up time by going through all these.

President: We have them deposited with the Registrar.

Mr. Clauson: Yes, they have been handed in. So the position there was that the directors had a meeting, they said, "We have power to raise so much capital; we can proceed to raise it in order to put

ourselves in funds to meet certain cash expenditure we shall have to meet, and we will raise it in respect of the (b) claim". I venture to submit that that is quite sufficient evidence.

Turning now next to the Southern Railway Company. The Tribunal have been provided with a bundle which begins "Extract from Resolution passed by the Proprietors . . . on Friday, 7th March, 1924". It is a series of documents, with the proprietors' resolution of March 7, 1924, giving the directors power to create and issue over 3 millions of share capital and over 3 millions of loan capital.

Then on October 9, 1924, there was this minute of the Board:—"Raising of Capital in relation to Standard Revenue":—A Memorandum was submitted on this subject, from which it appears that unless the decision of the Railway Rates Tribunal as given on the 31st July, 1924, is reversed on appeal, it will be necessary for the Company to raise by the end of June next further Capital to the extent of three millions beyond the two millions of Redeemable Preference Stock created by Board minute of 29th May, 1924".

This is the Memorandum which is annexed to the minute, "Raising of capital in relation to Standard Revenue".

President: This is a rather long Memorandum, is it not?

Mr. Clauson: Yes.

President: Need we have the whole of it?

Mr. Clauson: It states the point.

President: Yes, it does, very clearly.

Mr. Clauson: It refers to the Railway Rates Tribunal, and then says at the bottom of the page, "The decision of the Railway Rates Tribunal is to form the subject of an appeal but if it is upheld it means that the Railway Companies must for the protection of their shareholders discontinue the practice which has obtained in the past of temporarily financing their capital expenditure out of internal resources. It follows, therefore, that we must be prepared to finance the expenditure on Capital Account up to the date when the Tribunal first fixes the rates and charges by raising the necessary capital before the date of such first fixing, and that each year in future we must in a similar way raise capital in respect of the Capital Expenditure in such year or annually at a convenient time after such expenditure has been ascertained."

24 March, 1925.]

[Continued.]

Position of Southern Railway Company.—Up to the end of 1923 the Southern Railway Company and its Constituents had spent about eight hundred thousand pounds on Capital Expenditure which had not been taken into account under the second of the headings above referred to. This has been financed entirely out of the internal resources of the Company.

During the year 1924 Capital Expenditure is likely to be about £750,000 and in 1925 it will, owing to Electrification, probably reach the further figure of £3,500,000, but as it is not yet known when the "appointed day" will be, it is of course not possible to say whether or not the whole of this expenditure will be incurred before such "appointed day". It would appear, however, that in order to be on the safe side we must arrange for a Capital issue of no less than £5,000,000 by the end of June, 1925.

The Board have already approved a recommendation of the Finance Committee that two million pounds of Redeemable Stock should be issued at the end of the present year. One million pounds will be used for the redemption of L. & S.W. Redeemable Preference Stock and the remaining one million pounds will go towards meeting Capital Expenditure up to the end of the present year as referred to above. It would appear to be necessary to make provision for the issue of a further amount of three million pounds by the end of June next".

Then on the next page you will see this minute of October 22, 1924:—"After reading and considering the Finance Committee minute of this date it was RESOLVED as follows:—That under the powers contained in the Railways (Southern Group) Amalgamation Scheme, 1922, the sum of two million pounds Redeemable Preference Stock be and it is hereby created, such Stock to be issued subject to the terms and conditions hereunder stated; one million pounds (part thereof) being in substitution for the one million pounds 5 per cent. Redeemable Preference Stock, 1924, about to be redeemed (as authorised by Section 9 (e) (2) of the said Scheme) and one million pounds (further part thereof) being a portion of the sum of three million five hundred and forty-three thousand eight hundred and forty pounds which the Company is authorised to raise by Section 19 of the said Scheme and by a Resolution passed at a General Meeting of the Proprietors held on the 7th March, 1924." Then there are the provisions as to the terms of the stock, and so on.

So the Tribunal see that it is after considering a minute which pointed out the reasons why it was desirable to raise the stock, they proceed to pass the necessary resolutions.

Then there is on the last page an extract from the minutes of the Finance and Rating Committee, dated March 11, 1925, making it quite clear how the thing has worked out, and mentioning the exact figures of £757,725, which is the (b) claim up to date. On that I submit it is quite clear that that stock has been raised in respect of the capital expenditure in the (b) claim.

I ought to tell you that I have Mr. Cope here from the Great Western and a gentleman from the

Southern Railway who can give any further explanations if my friends wish it.

Mr. Merriman: I do not want my friend to put a witness in the box merely to prove these documents. If there is anything fresh he wants to call evidence about I have nothing to say.

President: Your point is quite apart from the mere technical form of these documents; you say subsequently you cannot appropriate capital. That is your point?

Mr. Merriman: Yes.

President: So that it really does not turn on this. You do not want a witness called in that connection.

Mr. Merriman: No. I say what is in the minds of the directors is one thing, and what they have raised the capital for is another thing.

President: No, I do not think we want any more evidence.

Mr. Clauson: My friend puzzles me. He says, "What is in the minds of the directors is one thing." If he means it is wholly immaterial what was in their minds, then no good purpose will be served by calling these gentlemen to tell you of the discussions which took place before the various resolutions were passed. So I think I had better leave it there.

President: I think so.

Mr. Clauson: On that, our submission is that, at all events so far as satisfying the Tribunal that the capital which has been or is being raised was raised in respect of the capital expenditure is concerned, the evidence we have given before you satisfies that. I do not know that there is any further point with which I can usefully deal at the moment.

President: I do not think there is. Do you wish to say anything on this, Mr. Hurcomb?

Mr. Hurcomb: No, I do not think there is anything I want to say.

President: Will you say that your Department will make some reconciliation of the figures, or, after looking at the figures, say you will be content with the reconciliation which has been proved? Are you prepared to say whether you will, or deal with it when we meet again?

Mr. Hurcomb: In the interval we will see to what extent we can verify those figures. We may have to ask for some further figures, which no doubt we shall be able to obtain from Mr. Quirey and his colleagues.

President: Then we shall meet again on April 27, when this subject will be resumed. In the meantime you will have put in your points (so to speak), Mr. Merriman, and they will have received the answers of the railway companies. Let it be as informal as possible. You understand me, Mr. Merriman, I was not reflecting the least bit just now that you might be taking it too formally. I am assuming you are trying to assist me as much as possible, and I am only grateful for your assistance.

Mr. Merriman: If you please, Sir.

Mr. Clauson: If my friends will put forward their points we will do our best to meet them, and we shall know before we meet again exactly what is in issue.

President: Yes.

(Adjourned till Monday, April 27, 1925.)